GTE

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CC Docket 92-256

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Carol L. Bjelland
Director
Regulatory Matters

August 28, 1992

Mr. Pat Donovan
and
Mr. John Morabito
Policy & Program Planning Division
Federal Communications Commission
1919 M Street, N. W. - Room 544
Washington, D. C. 20554

RE: Application of ONA to GTE

Dear Pat and John:

As we discussed at the conclusion of our meeting on August 4, 1992, GTE has prepared some additional information to supplement its proposal concerning the formal application of ONA rules to GTE. The attached information, submitted for your review and consideration, should clarify, and further substantiate, GTE's proposal for modification of existing ONA rules.

Please contact me if you have questions concerning the information attached, or if you wish to discuss this supplemental information at greater length.

Sincerely,

Carol L. Bjelland

Carol L. Bjelland

C: Kathy Levitz - Deputy Bureau Chief - Policy
Jim Schlichting - Chief, Policy Division

# SHOULD

# THE CEI/ONA RESTRICTIONS

# APPLY TO GTE

# ?

August 27, 1992

# EXECUTIVE SUMMARY

GTE suggests any approach to the possibility of applying Open Network Architecture ("ONA") rules to GTE should recognize at the outset the reasons why the Commission in the past decided not to do so. Four times over the past dozen years, the question has been raised of whether GTE should be treated differently from the various Bell Operating Companies ("BOCs"). On each one of these occasions, after exhaustive study, the FCC determined that the characteristics of GTE and the circumstances that affect its operations justify different treatment. Under the criteria applied in the past, it is even clearer today that the ONA restrictions applicable to the BOCs should not be imposed on GTE.

The Contel merger strengthens the facts and logic that supported earlier FCC decisions finding justified different treatment of GTE. Today GTE is a more rural, a more dispersed company because of the Contel merger. As we go through infra item by item the reasoning that supported Commission action in the past finding that the differences between GTE and the BOCs justify different treatment, we find GTE's case is stronger than it was when the Commission made its previous findings.

Added to this is a history of responsible behavior on the part of GTE since 1988 that has not resulted in a single plausible complaint to the FCC relevant to these issues. GTE is a responsible corporate citizen. Independently of FCC requirements, GTE governs itself so as to maintain an environment of fair competition. GTE behaves in such a way as to respect and promote the competitive policies that underlie the ONA requirements that govern the BOCs.[1]

Imposition of the BOC requirements on GTE would not be "cost free." For GTE, the aggregate burdens of these requirements would be

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[1] In his recent testimony before Congress, after discussing GTE's role as "our largest local exchange phone company" and a furnisher of "a diversity of health, education, retail, interactive, and Government-related information services," Chairman Sikes observed: "GTE's participation in these markets has not hurt competition. Indeed, the company has been an innovator when it comes to experimenting in offering the public interactive information services." Testimony of Chairman Sikes before the Subcommittee on Economic and Commercial Law, Committee on the Judiciary, United States House of Representatives, Hearings on Competition Policy in the Telecommunications Industry, March 18, 1992.

enormous.[2] Stressed infra are those aspects of the BOC requirements that would create the gravest problems for GTE.

Under these circumstances, at the very least it must be said that the burden rests firmly on anyone who would call for a reversal of the policy judgments the FCC reached after careful study on four different occasions.

Discussed in Attachment G are those elements of the CEI/ONA requirements applicable to the BOCs that would present the most serious problems for GTE and in specific terms why there is no need to subject GTE to such additional regulatory burdens.

Discussed infra are ways the BOC requirements could be modified to make them less onerous for GTE as a fair reflection of the important differences between GTE and the BOCs. These suggestions involve non-discrimination reporting for installation and maintenance, CPNI, Operational Support Systems access, and network information disclosure.

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[2] In CC Docket No. 90-623 (D.90-623), Computer III Remand Proceeding, the State of Hawaii's Department of Commerce and Consumer Affairs urged the FCC to apply the BOC nondiscrimination safeguards to GTE. GTE's Reply Comments submitted April 8, 1991 estimated that implementing all the BOC restrictions would cost GTE more than $20 million in first year expense; implementing them in Hawaii only would cost more than $6 million in first year expense. The Commission concluded the matter was beyond the scope of D.90-623. Report and Order, 6 FCC Rcd 7571, 7604 n.122 (1991), appeal pending.

## BACKGROUND

Pre-divestiture, the question of how to treat GTE was addressed in Computer II.[3] The FCC at one point proposed to place on GTE the same restrictions as were to be applied to the Bell System; on considering the evidence more carefully, the decision was to treat GTE differently for a number of reasons that were carefully articulated.[4]

Post-divestiture, in Computer III,[5] the FCC decided that different circumstances justify different treatment of GTE in the context of enhanced services.[6] The Commission stressed the differences between GTE and the BOCs. "GTE is the ITC most like a

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3 Second Computer Inquiry, Docket 20828, Final Decision, 77 F.C.C.2d 384 (1980), reconsideration, 84 F.C.C.2d 50 (1980) ("Reconsideration Order"), further reconsideration, 88 F.C.C.2d 512 (1981) ("Further Reconsideration Order"), aff'd sub nom. Computer and Communications Industry Ass'n v. FCC, 693 F.2d 198 (D.C. Cir. 1982), cert. denied, 461 U.S. 938 (1983), further recon. denied, FCC 84-190 released May 4, 1984.

4 Reconsideration Order, 84 F.C.C.2d at 72-75. "Concerning enhanced services, the most compelling argument tendered is that GTE is dependent on AT&T for the vast majority of its interstate transmission needs." Id. at 72-73. "With respect to CPE ... [g]iven that GTE's operating territories are predominantly rural, it is questionable whether the costs of [structural] separation ... is warranted. Absent more compelling facts, we conclude that the public will be better served if the separate subsidiary requirement is removed for GTE for its provision of CPE." Id. at 73.

5 Amendment of Section 64.702, CC Docket No. 85-229, Phase I, Report and Order, 104 F.C.C.2d 958 (1986) ("Phase I Order"), reconsideration, 2 FCC Rcd 3035 (1987) ("Phase I Reconsideration Order"), further reconsideration, 3 FCC Rcd 1135 (1988) ("Phase I Further Reconsideration Order"), second further reconsideration, 4 FCC Rcd 5927 (1989) ("Phase I Second Further Reconsideration Order"), Phase I Order and Phase I Reconsideration Order vacated sub nom. California v. FCC, 905 F.2d 1217 (9th Cir. 1990); CC Docket No. 85-229, Phase II, 2 FCC Rcd 3072 (1987) ("Phase II Order"), modified on reconsideration, 3 FCC Rcd 1150 (1988) ("Phase II Reconsideration Order"), further recon., 4 FCC Rcd 5927 (1989) ("Phase II Further Reconsideration Order"), Phase II Order vacated sub nom. California v. FCC, 905 F.2d 1217 (9th Cir. 1990), pet. for review pending of Phase II Order and Phase II Reconsideration Order sub nom. BellSouth Corp. v. FCC (9th Cir. No. 88-7290, filed April 20, 1988).

6 Phase II Order, 2 FCC Rcd at 3099-3102. "[W]e conclude that the public interest is best served ... by not applying either CEI/ONA or the other Phase I nonstructural safeguards to any of the ITCs [Independent Telephone Companies]." Id. at 3102.

BOC, yet the record reveals that it has features that clearly distinguish it."[7] Proceeding to discuss examples to illustrate this conclusion, the Commission's first distinction related the nature of the service areas served by either GTE or a BOC to the ability to exercise monopoly control:

> [A]n analysis of GTE's service areas demonstrates that although in the aggregate GTE is similar in size to each BOC, unlike the BOCs, its service areas are distributed nationwide in a large number of noncontiguous geographic areas. This circumstance effectively prevents GTE from exercising monopoly control in large regions of the country, comparable to those served by the BOCs.[8]

A second distinction concerned the size and character of GTE's service areas:

> Also, compared to the BOCs, GTE service areas tend to be smaller (fewer access lines per exchange), less densely populated (fewer access lines per square mile), and they contain a smaller percentage of business customers.[9]

"These basic characteristics of GTE," the Commission said in 1987, "have not changed significantly since 1980, when we decided to refrain from applying our Computer II structural separation requirements to GTE."[10] The Commission saw the consequences of these differences as reducing GTE's comparative opportunity for anticompetitive action:

> These factors indicate that GTE has more limited opportunities than the BOCs to use bottleneck control over local exchange facilities for anticompetitive purposes in the enhanced services marketplace to the detriment of competitive providers and their customers.[11]

Inasmuch as the rules in question were designed to prevent anticompetitive behavior, the conclusion that GTE had more limited opportunities to engage in such behavior led logically to the conclusion that the restrictions necessary for the BOCs were not needed for GTE, so that applying the BOC restrictions to GTE "would extend regulation unnecessarily to GTE."[12]

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[7] Id. at 3101.

[8] Id.

[9] Id.

[10] Id.

[11] Id.

[12] Id.

> The continued existence of such distinctions indicates that the nonstructural safeguards established in the Phase I Order, while necessary for the BOCs, at the present time would extend regulation unnecessarily to GTE.[13]

In the context of Customer Premises Equipment ("CPE"), a similar analytic process produced the same essential conclusion: that different treatment of GTE as compared to the BOCs was warranted.[14]

> After careful consideration of the record and further analysis of the application of nonstructural safeguards to the provision of CPE by ITCs, we have determined that significant differences exist for these purposes between the BOCs and ITCs, including GTE, and that the new safeguards adopted in this Order [for the BOCs] should not be applied to any ITC.[15]

With specific reference to GTE, the Commission said:

> Although, in the aggregate, GTE's number of access lines and revenues are similar to those of the BOCs, we believe that GTE does not have the same potential ability as the BOCs to engage in anticompetitive conduct in the provision of CPE.[16]

The Commission stressed the "predominantly suburban and rural character of most of GTE's service areas" containing "fewer major business customers" as a "key distinction between the BOCs and GTE."[17] Then the Commission noted that the "greatest potential for anticompetitive abuse occurs in the business market for CPE, especially CPE used by large business customers," so that "[w]here fewer such customers exist, there is less to be gained through anticompetitive conduct."[18] "In addition," the Report and Order said:

> GTE has neither national nor regional concentrated control of bottleneck facilities comparable to that exercised by the BOCs. Except for Hawaii, and perhaps Tampa and selected areas of Los Angeles, GTE's service areas are

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13 Id.

14 Furnishing of Customer Premises Equipment by the Bell Operating Telephone Companies and the Independent Telephone Companies, CC Docket No. 86-79, Report and Order, 2 FCC Rcd 143 ("D.86-79 Report & Order"), modified, 3 FCC Rcd 22 ("D.86-79 Modified Order") (1987).

15 Report and Order, 2 FCC Rcd at 156.

16 Id. at 158.

17 Id.

18 Id.

> relatively small in numbers of lines when compared to the BOC service areas.[19]

"Moreover," the Commission said, "BOC service areas are concentrated in single, contiguous geographical regions, unlike those of GTE, whose operations spread from the east coast to Hawaii and encompass parts of 32 states."[20] The result is a "fractionalization of service territories [that] discourages, if not prevents, GTE from using its dominant position within its local exchange service areas for anticompetitive purposes in the CPE market."[21] And the Commission added:

> GTE territories are surrounded by the territories of other service providers, usually BOCs, that are in position to compete with GTE in the provision of CPE.[22]

Petitions for reconsideration of the Report and Order further pursued the question of applying BOC restrictions to ITCs and particularly GTE. After the Commission noted that there were no complaints of anticompetitive conduct on the part of ITCs,[23] a party (predictably) raised a few supposed incidents and it was argued once more the BOC restriction should apply to ITCs, specifically GTE, in association with the demand to require GTE to establish Centralized Operating Groups ("COGs"). For the fourth time the Commission examined GTE in relation to the BOCs and came to the same conclusion with respect to a restriction applied to the BOCs, holding that "imposition of a COG requirement on GTE would be unnecessarily burdensome."[24]

Further, the Commission took into account "more than three years of additional experience with the operations of the industry since we extended the structural separation requirements to the BOCs."[25] Finding "that the record does not provide any support for [the] claim that GTE is discriminating against independent CPE vendors," the Commission observed:

> The problems discussed ... are quite limited in number, and we find it significant that no one has filed formal or

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19 Id.

20 Id.

21 Id.

22 Id.

23 Id. at 157-58: "[N]o commenter has asserted that any ITC has engaged in discriminatory conduct during this period based on the customer's source of CPE."

24 D.86-79 Modified Order, 3 FCC Rcd at 28.

25 Id.

informal complaints with this Commission alleging that GTE has discriminated in its provision of network services to non-affiliated CPE vendors or their customers.[26]

In the anti-trust context, there is a parallel history in that the court approved different treatment of GTE based on important differences between GTE and the BOCs.[27] In approving the GTE Consent Decree, Judge Greene carefully considered and relied on the differences between GTE and the BOCs/RHCs. While "[e]ach of the Bell regional companies has a very strong, dominant position in local telecommunications in the area in which it serves," he said, "GTE's operations, by contrast, are widely scattered."[28] In reaching his conclusion, Judge Greene stressed the dispersed, predominantly rural nature of the GTE companies' operations; and added that this dispersion has "substantial consequences in terms of monopoly control":

> Unlike the Bell Companies, which were dominant almost everywhere, the GTE companies are relatively thinly dispersed over 31 states. In fact, in terms of concentration, the GTE companies serve roughly half as many telephones per square mile as do the Bell Operating Companies. This dispersion has, of course, substantial consequences in terms of monopoly control. And, while the Bell Operating Companies serve the vast majority of the high-density, heavily-populated metropolitan areas..., the GTE Operating Companies serve primarily the nation's rural and suburban areas.[29]

As recently as March 1992, the court placed heavy emphasis on these differences in granting to GTE a waiver of restrictions in the GTE decree.[30] The court's careful review of these matters reinforces the sound judgments made by the FCC in the past.

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[26] Id.

[27] United States v. GTE Corporation ("U.S. v. GTE"), 603 F.Supp. 730, 733-36 (D.C.D.C. 1984).

[28] Id. at 737.

[29] Id. at 734, footnotes omitted.

[30] United States v. GTE Corporation, 1992 U.S. Dist. LEXIS 4781. Granting a waiver to GTE, the court said:

## ANALYSIS

If we apply the facts that prevail today, i.e., taking account of the Contel merger, it is demonstrated infra that GTE's case is now even stronger in terms of the criteria applied by the Commission. Specifically:

**First: nationwide distribution.** GTE's service areas are today to a greater extent "distributed nationwide in a large number of noncontiguous geographic areas."[31] Thus to a greater extent today it is correct to say: "This circumstance effectively prevents GTE from exercising monopoly control in large regions of the country, comparable to those served by the BOCs."[32]

**Second: density, particularly of business customers.** Today to a greater extent, in comparison to the BOCs: "GTE service areas tend to be smaller (fewer access lines per exchange), less densely populated (fewer access lines per square mile), and they contain a smaller percentage of business customers."[33]

**Third: Predominantly suburban and rural with fewer major business customers.** Today to a greater extent a "key distinction between the BOCs and GTE" is that "most of GTE's service areas" have a "predominantly suburban and rural character" that contains "fewer major business customers."[34]

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> GTE requests ... a waiver of the decree.... GTE stresses some of the factual differences between it and the Regional Companies. GTE serves [portions of] 101 LATAs which is far more than are served by any of the Regional Companies. The cost to GTE of installing STPs and/or data bases in each of its 101 LATAs therefore would be far higher than the analogous cost for a Regional Company, amounting to well over $1 billion [as against $60 million for U S West]. GTE's operations are more national in scope and serve primarily the nation's rural and suburban areas, in contrast to the concentration of much of the Regional Companies' service in urban areas.
>
> While the AT&T decree and the GTE decree have generally been treated in parallel fashion, this need not be done where, as here, there is a fundamental, substantive difference between the two situations.

Footnotes omitted.

31 Phase II Order, 2 FCC Rcd at 3101.

32 Id.

33 Id.

34 D.86-79 Report & Order, 2 FCC Rcd at 158.

**Fourth: Neither national nor regional concentrated control of bottleneck facilities.** Today "GTE has neither national nor regional concentrated control of bottleneck facilities comparable to that exercised by the BOCs" with the same narrow exceptions identified in 1988: "Hawaii, and perhaps Tampa and selected areas of Los Angeles." And today to an even greater extent "GTE's service areas are relatively small in numbers of lines when compared to the BOC service areas."[35]

**Fifth: Fractionalization.** Today as in the past, the result of the foregoing is a "fractionalization of service territories [that] discourages, if not prevents, GTE from using its dominant position within its local exchange service areas for anticompetitive purposes...."[36]

**Sixth: Surrounded by BOC territory.** Today as in the past, "GTE territories are surrounded by the territories of other service providers, usually BOCs, that are in position to compete with GTE...."[37]

In the course of considering the BOC/GTE differences, the Commission has recognized that it is not simply a matter of size.[38] The question being grappled with is what restrictions are required to protect the public from the consequences of anticompetitive action. Clearly a key to this question is the extent of a company's ability to take anticompetitive action.

Having found that there existed "factors [that] indicate that GTE has more limited opportunities than the BOCs to use bottleneck control over local exchange facilities for anticompetitive purposes in the enhanced services marketplace to the detriment of competitive providers and their customers,"[39] the Commission decided to treat GTE differently from the BOCs.

Let us examine the same factors that continue to provide the BOCs with important economies of scale and scope not available to GTE.

1. Following the Contel merger, GTE is far more rural and dispersed than it was. GTE now provides service in forty states instead of thirty-one. This merger added approximately 20% more

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[35] Id.

[36] Id.

[37] Id.

[38] See Phase II Order, 2 FCC Rcd at 3100-01; D.86-79 Report & Order in CC Docket No. 86-79, 2 FCC Rcd at 156.

[39] Phase II Order, 2 FCC Rcd at 3101.

access lines, but nearly doubled the total service territory.[40] In the thirty-eight states of the United States mainland, today BOC serving areas are three times as densely populated as GTE's areas, which far exceeds the differential stressed by Judge Greene in 1984, that the BOCs' areas were twice as dense.[41]

2. Thus, each BOC serves contiguous markets with high line densities across no more than 39 LATAs, while GTE serves markets that are geographically dispersed across portions of 139 LATAs with line densities typically one-third that of the BOCs. For example, in the states where both GTE and BOCs operate, BOCs have a 76% share of access lines while serving only 34% of the land area, whereas GTE has 13% of the access lines while serving 17% of the land area.[42]

3. GTE's 16.1 million domestic access lines are served from 6,441 switching entities, while US West, at 1,847, has the largest number of switching entities of all the BOCs.[43]

4. The GTE switching entities are generally very small. Over 5,000 switches are smaller than 2,000 lines. Only 369 GTE switches are larger than 10,000 lines.[44]

5. The BOCs serve very large markets, e.g., New York, Chicago, Houston, and Los Angeles, whereas GTE serves much smaller markets. For example, GTE has a major presence in only two of the top 50 markets (MSAs).[45]

6. BOC dominance of these major markets has important consequences for GTE marketing. In the thirty-eight mainland states served by GTE, only 6.5 percent of all firms with more

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[40] Prior to the merger, GTE had approximately 231,000 square miles and 13.2 million access lines. Contel served approximately 212,000 square miles and 2.6 million access lines.

[41] "[T]he GTE companies serve roughly half as many telephones per square mile as do the Bell Operating Companies." U.S. v. GTE, 603 F. Supp. at 734, footnote omitted.

[42] See Attachment A for a map showing the GTE service areas. Illinois is particularly illustrative. GTE serves 52% of the square miles and Ameritech serves 22%, yet GTE serves only 11% of the access lines while Ameritech serves 83% of the access lines.

[43] Source: 1991 FCC ARMIS Report No. 43-07. Bell South has 1680 switching entities with CLLI codes, Ameritech has 1438, Bell Atlantic has 1414, Southwest has 1380, NYNEX has 1336, and Pacific has 862.

[44] Attachment B illustrates the sizes of GTE switching entities.

[45] Attachment C demonstrates the GTE presence in the top 50 markets.

than one business location have their headquarters in GTE's franchised areas.

Further, as a consequence of the more concentrated character of BOC areas today and in the past, the BOCs have moved further than GTE into standardization of operational practices and procedures and support systems (OSS). Until GTE achieves the same level of standardization, the result will be higher operating costs.[46] For example, there is still some variation in the process followed to take a customer order and install service among GTE operating territories, which include very small and rural locations, some of which were part of Contel. Services often have different components and the mechanized systems employed are not uniform throughout GTE.[47]

The more concentrated serving territories that typically include metropolitan areas with large business customers provide economies of scale and scope for the BOCs that are simply not present for GTE, except in isolated instances. This lower cost per unit for the BOCs coupled with a higher total demand for more sophisticated services allows the BOCs to more easily justify the deployment of new services.

Notwithstanding divestiture, the BOCs are unified through Bellcore. This unity provides the necessary momentum to drive development of advanced technologies, architectures and the associated creation of new services. Thus, BOCs lead the industry in the introduction and tariffing of new network services. The typical scenario continues to be that the BOC introduces a new service, and such independent telephone companies as GTE respond at a later date with their own introduction if warranted by market conditions.

In addition, BOC aggregate buying power strongly influences equipment manufacturers. This leads to the production of equipment that comports with the criteria established by Bellcore/BOCs. BOC participation in standards setting bodies also heavily influences the adoption of industry standards. In contrast, the influence of GTE and other independent telephone companies is limited to their own buying power, a small fraction of the pooled BOC buying power.

Finally, GTE is subjected to more thorough regulatory scrutiny than any BOC. GTE's business practices are subject to the scrutiny of 40 state public utilities commissions as well as the FCC, while the BOC that operates in the most states is US West, which is in fourteen states. The dispersed nature of GTE operations requires significant resources to satisfy regulatory obligations and drastically lessens the potential for anti-competitive behavior.

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[46] This reflects the creation of both GTE and Contel through many mergers and acquisitions.

[47] <u>See</u> Attachment D for a listing of GTE's operational support systems.

The totality of these BOC/GTE differences represents an even stronger case than the Commission accepted in the past as justification for different regulatory treatment of GTE.

## EXPERIENCE

Today, it is once again being asserted that the restrictions imposed on GTE should be dramatically increased. Has there been a flood of complaints of misconduct on the part of GTE? Not at all. Since 1988, GTE is aware of only one complaint filed with the FCC alleging actions on the part of GTE claimed to be violative of CEI/ONA rules (if they had been applicable to GTE). That was an informal complaint filed for Voice-Tel Northwest,[48] which was shown to be groundless.[49] The letter of Voice-Tel's counsel and GTE's response are Attachment E.

In November 1991, counsel for the State of Hawaii's Department of Commerce and Consumer Affairs raised a single case where "an answering service information service provider in Hawaii has been unable to purchase certain unbundled functionalities, and is unable to competitively price its services."[50] The substantiation for this statement consisted of a letter dated November 5, 1991 from a firm

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48 IC-92-04125, Notice of Informal Complaint dated March 23, 1992.

49 A letter written by the customer (Attachment E) in question in this claimed "unhooking" matter said that the Voice-Tel complaint was "unwarranted." The customer's letter "state[s] unequivocally that the sales process, installation, and follow up by the GTE-NW Team, was professional and ethical." Further, the customer's letter denied that GTE personnel had even mentioned the availability of a competitive GTE service -- of which in any case the customer already had knowledge (it "was no secret"). The customer's letter said GTE was asked to provide a proposal and a demonstration, there having been no contract or letter of intent placed with Voice-Tel; and the customer "made the decision to install Centranet with Digital Sound solely on cost and application."

50 Attachment to Notice of Ex Parte Contact filed November 8, 1991 by Squire, Sanders & Dempsey on behalf of the State of Hawaii.

known as C & J Communications, Inc. (Attachment F) which made no complaint that GTE had engaged in anti-competitive activity.[51]

As was the case in 1987,[52] the record of actual FCC experience -- and specifically the absence of any significant number of complaints -- shows that the creation of new regulatory burdens for GTE is completely unnecessary.

## ABSENCE OF OFFSETTING REDUCTION IN REGULATORY BURDEN

When the FCC first decided to apply to the BOCs ONA and CEI restrictions, this action was accompanied by the elimination of the more burdensome separate subsidiary requirements. There was a net reduction in regulatory burdens by virtue of these concurrent actions. In contrast, application to GTE of the CEI/ONA restrictions that bind the BOCs represents an additional, and significant, regulatory burden. This is not justified by any misconduct on the part of GTE, as explained supra; nor is it justified by any other developments subsequent to the Commission's earlier decision that these restrictions would not apply to GTE, since in terms of every criterion applied by the Commission in the past, GTE's case is as strong or stronger, as discussed supra.

A net increase in regulatory burdens under these circumstances demands examination in relation to (i) President Bush's January 28, 1992 request addressed to Chairman Sikes to "evaluate existing regulations and programs and to accelerate action on initiatives that will eliminate any unnecessary regulatory burden..."[53] and (ii) Chairman Sikes' announcement of March 12, 1992 that one of the "broadly gauged regulatory reform initiatives" of the Commission is: "A paperwork/burden reduction initiative designed to reduce unnecessary paperwork and other regulatory burdens on FCC regulatees

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[51] The letter of C & J Communications, Inc. refers to "the clumsy, bundled marketing of Call Forwarding through SmarterCall/Wonderphone wherein my customers must buy three other custom calling features at a packaged price in order to obtain Call Forwarding [which is] often a necessary feature to connect with our answering service; the other three custom calling features are often unnecessary and unwanted." This statement reflects a misunderstanding of the relevant tariffs of GTE Hawaiian Tel. Co., which provided explicitly for just what C & J said its customers wanted: unbundled access to call-forwarding that permitted those customers to purchase call-forwarding without the three additional features.

[52] D.86-79 Modified Order, 3 FCC Rcd at 28.

[53] See Report of the FCC Regarding the President's Regulatory Reform Program, April 28, 1992.

by eliminating, consolidating and simplifying forms and reporting requirements."[54]

## RECOMMENDED WAYS TO MAKE THE RESTRICTIONS LESS ONEROUS

As shown supra, application to GTE of the ONA/CEI restrictions that bind the BOCs is unjustified for many reasons. To the extent any restrictions might be justifiable, they would have to be modified to make them less onerous for GTE as a fair reflection of the important differences between GTE and the BOCs. Specifically:

Concerning a non-discrimination reporting requirement for installation and maintenance: Absent a showing that there has been a failure on the part of GTE to meet the needs of ESPs, this should not be imposed on GTE. If such a requirement were imposed, it should allow for the meeting of the requirement by a GTE showing that it is in compliance with the spirit of the requirement inasmuch as GTE's internal practices, procedures and systems preclude discrimination.

Concerning CPNI: GTE stresses that imposing the CPNI requirement applicable to the BOCs would be the most burdensome for GTE and is clearly unnecessary, as shown in Attachment G; and it would unduly complicate the interface with GTE's customers. Absent a showing that GTE has violated the spirit of the Commission's rules by (1) violating customer privacy or (2) having GTE personnel exclusively involved in the marketing of enhanced services given unrestricted access to CPNI, no CPNI requirement should be imposed on GTE. GTE is willing to assume voluntarily one aspect of the CPNI requirement: providing notification to ESPs of the following CPNI rights: (i) the right to restrict their own CPNI; (ii) the right to ensure that ESP clients realize they can request CPNI restrictions; and (iii) the right to obtain their client's CPNI upon furnishing written authorization. The most burdensome aspects of the CPNI rules for GTE would be: (A) automatic restriction for multiline business customers greater than 20 lines, and (B) polling and balloting multiline customers from 2 to 19 lines.

Concerning network information disclosure: Absent a showing that there has been a failure on the part of GTE to comply with the disclosure requirements that have applied heretofore (the "All Carrier Rule"[55] and Section 68.110 of the Commission's Rules), this should not be imposed on GTE. If such a

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[54] Id. As Chairman Sikes said in a January memo to other commissioners: "We can leave, as part of our legacy, the termination of needless contact between the government and the private sector which siphons off a measure of private wealth and FCC resources."

[55] See Computer and Business Equipment Mfrs. Ass'n, 93 F.C.C.2d 1226 (1983).

requirement were imposed, it should be made clear that it applies only to the extent GTE creates and develops functionality that offers new and fundamental network capabilities; and that the requirement to disclose to its ESP customers is activated by GTE's decision to make or procure such functionality. As to the release of technical information pertaining to deployment of a new device or network change that affects its ESP customers' interconnection with GTE's network, GTE would be obliged to continue to comply with the All Carrier rule and Section 68.110.

Operational Support Systems (OSS) Access Requirements. Absent a showing that there has been a failure on the part of GTE to meet the needs of ESPs, this should not be imposed on GTE. The more rural, more dispersed nature of GTE serving territories prohibit the assumption that because an OSS offering is (or may be) viable in a BOC serving area, it would be viable in a GTE serving area. GTE is willing to furnish OSS services where they are justified by demand, technical capability, the need for security, respect for customer privacy, and economic viability. GTE is willing to commit to (i) evaluating any *bona fide* request for OSS Access using the model ESP input process as defined by the IILC and (ii) furnishing a response within 120 days.

## CONCLUSION

There are a number of reasons why application to GTE of the ONA rules that apply to the BOCs continues to be inappropriate. The preceding discussion demonstrates these reasons.

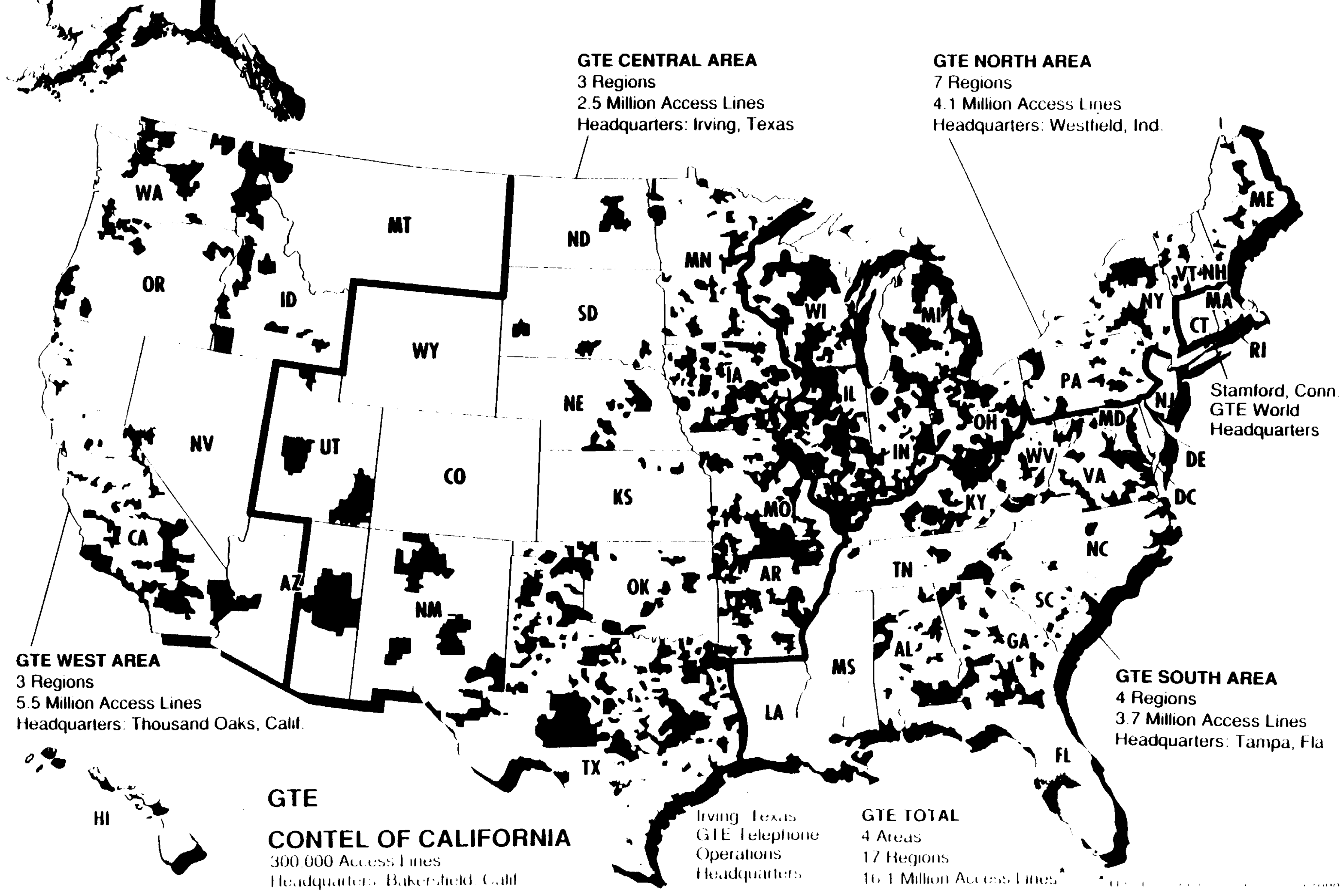
An overall consideration is the internal climate that exists within a company in terms of anticompetitive behavior. The absence of complaints to the FCC since 1988 testifies to an internal climate within GTE that discourages such behavior -- just as the similar absence of complaints in 1987 provided similar testimony. GTE continues its serious and determined effort to be a good corporate citizen. Independently of FCC requirements, GTE continues to implement procedures that satisfy the concerns that underlie those requirements.

There has been no change in the fundamental differences between the BOCs and GTE since the FCC's decision discussed *supra* not to apply to GTE the CEI and ONA requirements that apply to the BOCs. The differences between the BOCs and GTE stressed by the Commission still exist and warrant the application of a different scheme of regulatory oversight.

Attachment G, with its Exhibits, outlines and explains those elements of the CEI/ONA requirements applicable to the BOCs that would present the most serious problems for GTE and in more specific terms why there is no need to subject GTE to these additional regulatory burdens.

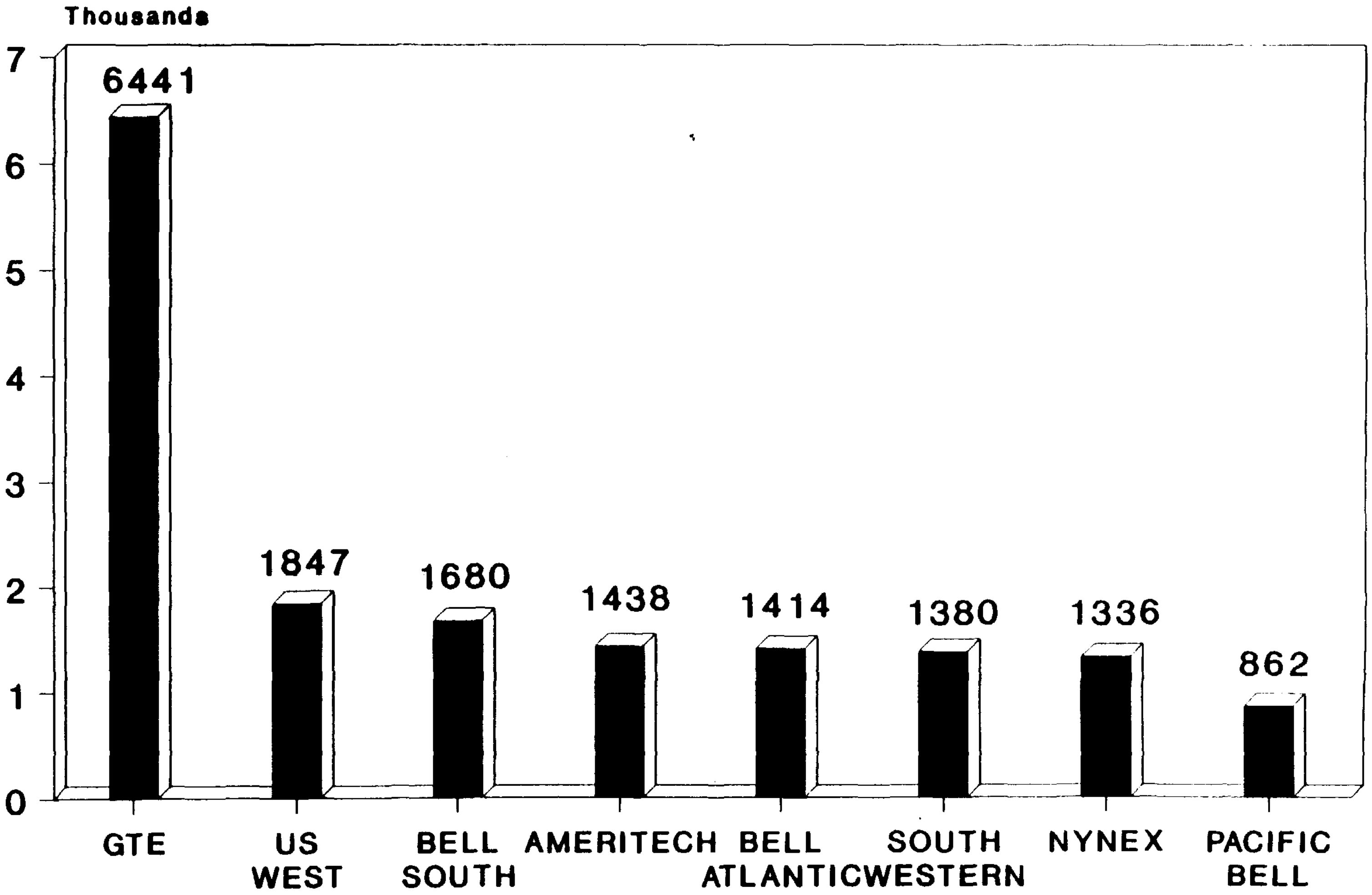
# ATTACHMENT A

# Telephone Properties



# ATTACHMENT B

# NUMBER OF SWITCHING ENTITIES
## GTE VS RBOCs



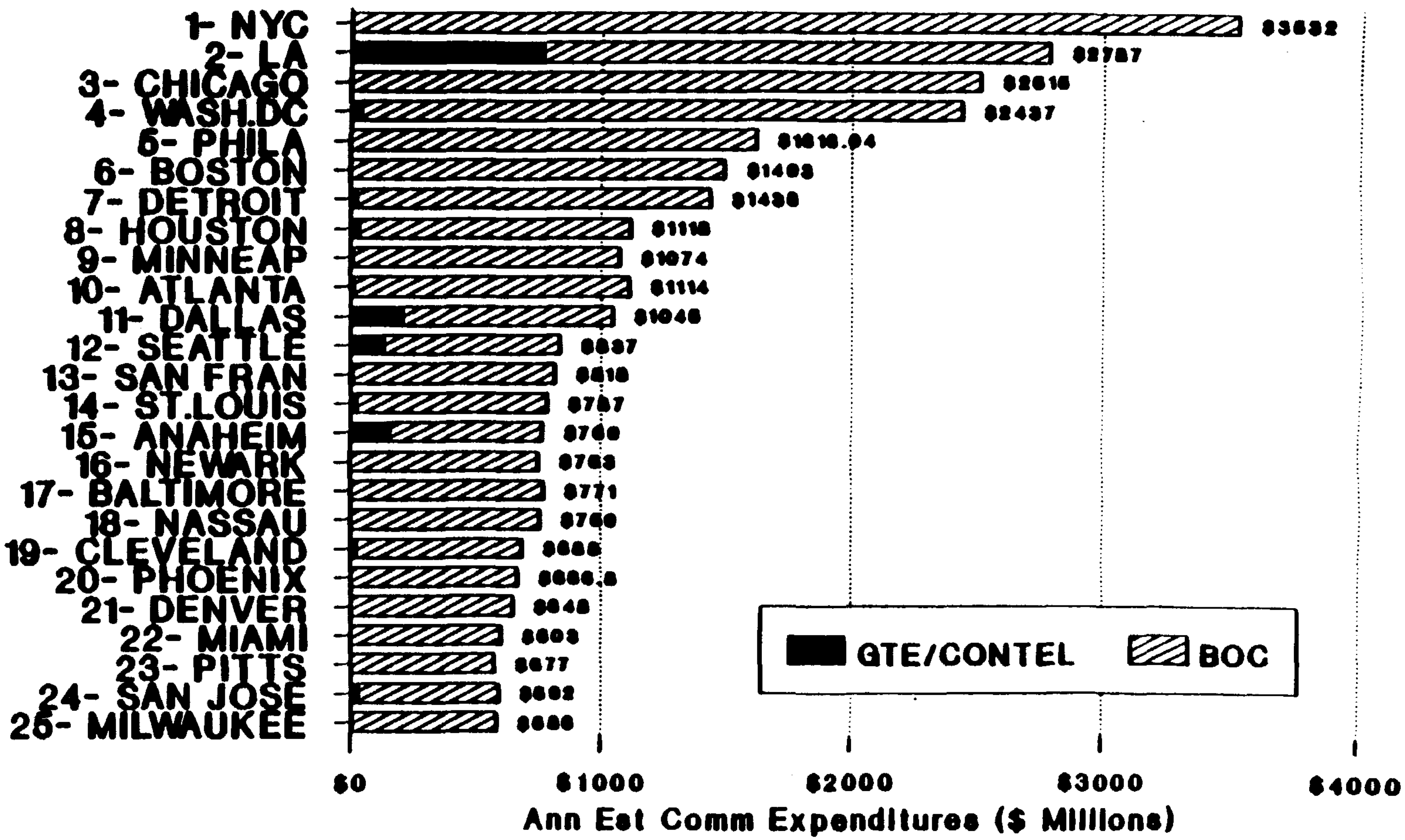

SOURCE: 1991 FCC ARMIS REPORT NO. 4307

# ATTACHMENT C

# GTE/CONTEL MARKET PRESENCE

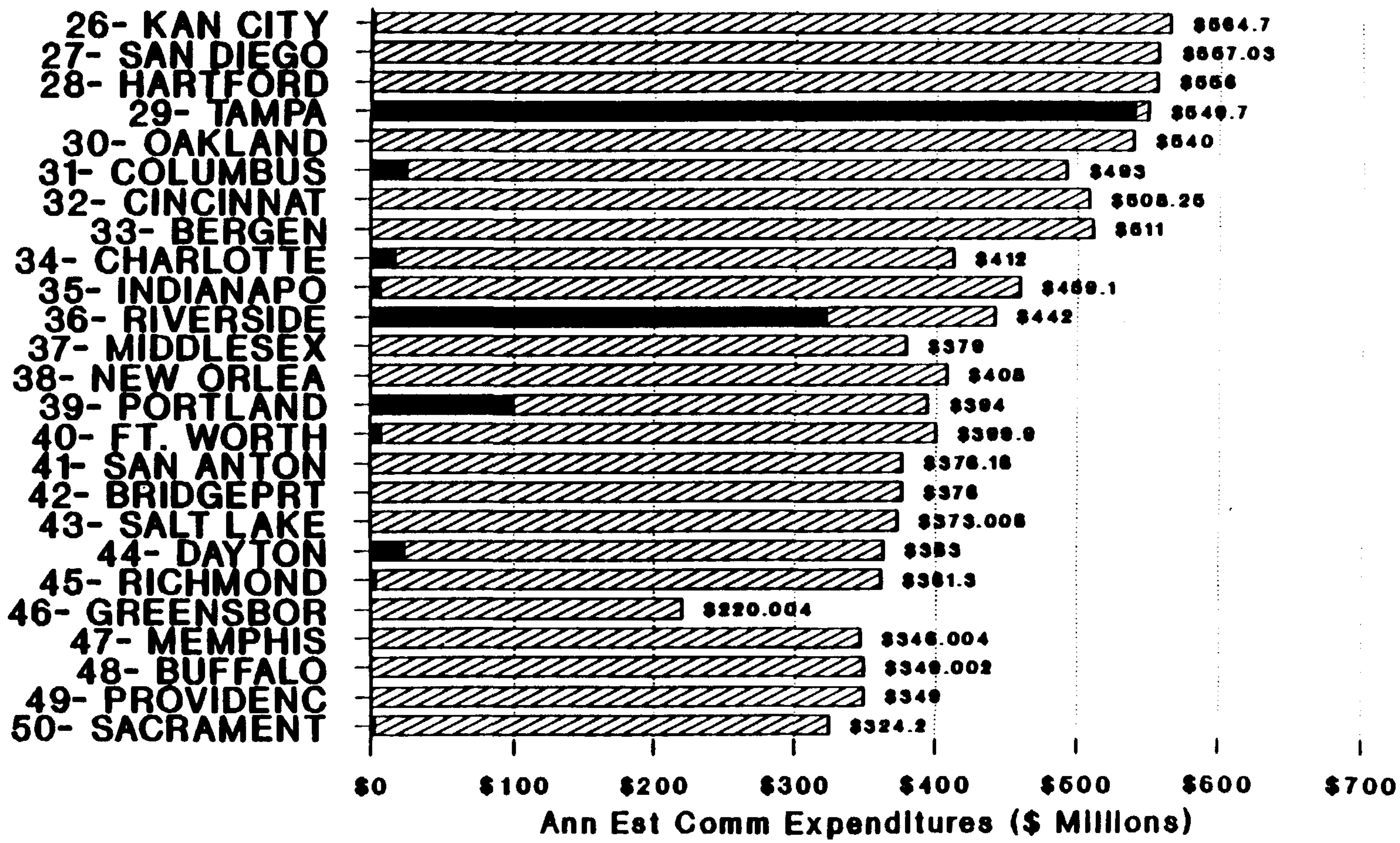
## TOP 25 MSAs

(in descending order)



# GTE/CONTEL MARKET PRESENCE

## BOTTOM 25 MSAs OF TOP 50



# ATTACHMENT D